

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2748

Introduced by Assembly Member Jones

February 24, 2006

An act ~~relating to public postsecondary education~~ to amend Sections 94100, 94110, 94140, and 94146 of, and to add Section 66017.7 to, the Education Code, relating to public postsecondary education, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2748, as amended, Jones. Public postsecondary education: ~~Higher Education Student Housing Finance~~ California Educational Facilities Authority: *student housing*.

(1) Existing law establishes the California State University, under the administration of the Trustees of the California State University, and the University of California, under the administration of the Regents of the University of California, as 2 of the segments of public postsecondary education in the state.

Existing law establishes the California Educational Facilities Authority Act, an express purpose of which is to develop student, faculty, and staff housing on or near public and participating private institutions of higher education through the use of agreements with participating nonprofit entities.

This bill would express the intent of the Legislature to ~~enact legislation to establish a Higher Education Student Housing Finance~~ that the bill should authorize the California Educational Facilities Authority. ~~The bill would also express legislative intent that this authority be authorized to issue debt for the purposes of building to~~

construct student housing on or near campuses of the California State University and the University of California; that the *bill authorize the California State University and the University of California be authorized to sell, lease, or otherwise transfer real property to the authority so that student housing could be constructed on that property; and that the bill structure the debt issued by the authority be structured under the bill so that the debt would not be counted against the university systems by the bond market; and that the legislation include a declaration that, with respect to the construction of noninstructional facilities, the provision of student housing would be the highest systemwide priority of the California State University and the University of California.*

The bill would authorize the Regents of the University of California and the Trustees of the California State University to sell, lease, or otherwise transfer real property to the California Educational Facilities Authority for the purposes of the construction of student housing on that real property pursuant to the bill.

(2) Existing law defines “student housing” for the purposes of the California Educational Facilities Authority Act as a residential unit owned by a participating nonprofit entity and located on real property owned by that entity for use by an individual enrolled at a public college, public university, or participating private college.

The bill would amend that definition so that “student housing,” for the purposes of the act, would also include a residential unit owned or leased by the authority or a residential unit located on real property owned or leased by the authority.

(3) Existing provisions of the California Educational Facilities Authority Act set forth the powers of the authority. Existing provisions of the act also provide that bonds issued under the act are not deemed to constitute a debt or liability of the state or to directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or pledge any form of taxation or to make any appropriation for their payment.

This bill would authorize the authority to purchase, lease, or otherwise receive real property from the Regents of the University of California or from the Trustees of the California State University that is on or near a campus of either segment, and contract for or otherwise provide for the construction of student housing on that real property. Because the bill would authorize the authority to expend its funds for a new purpose, it would constitute an appropriation.

The bill would provide that the provision relating to bonds issued under the act not being deemed to constitute a debt or liability of the state and not directly or indirectly or contingently obligating the state or any political subdivision thereof would not be applicable to bonds issued for the purpose of funding the construction of student housing, and the purchase or lease of real property therefor, on or near a campus of the University of California or the California State University pursuant to the bill.

Because this bill would authorize the authority to expend funds for new purposes, it would make an appropriation.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (1) *The student population of University of California (UC)*
- 4 *campuses will grow by 12 percent from 208,000 to 233,000, and*
- 5 *the student population of California State University (CSU)*
- 6 *campuses will grow by 10 percent from 405,000 to 445,000 by*
- 7 *the 2010–11 academic year.*
- 8 (2) *The number of students housed in campus housing is*
- 9 *already too low, averaging 33 percent at UC and 8.5 percent at*
- 10 *CSU.*
- 11 (3) *Beyond benefits to individual campuses, housing more*
- 12 *students on campus has a variety of regional and state benefits,*
- 13 *including all of the following:*
- 14 (A) *It reduces commute times and traffic congestion, which*
- 15 *improves air quality by getting cars off the road.*
- 16 (B) *It moves students out of affordable housing in the*
- 17 *community that could otherwise be occupied by low- or*
- 18 *moderate-income families.*
- 19 (C) *It promotes the spending of students' dollars in the*
- 20 *impacted communities surrounding the universities.*
- 21 (D) *It reduces the need for students to bring a car to the*
- 22 *college community, easing campus parking problems and*
- 23 *reducing the need for future parking lots or structures.*
- 24 (E) *It improves student fitness by encouraging walking and*
- 25 *cycling.*

1 (4) *With respect to the construction of noninstructional*
2 *facilities, the provision of student housing should be the highest*
3 *systemwide priority of the California State University and the*
4 *University of California.*

5 ~~SECTION 1. It is the intent of the Legislature to enact~~
6 ~~legislation to establish a Higher Education Student Housing~~
7 ~~Finance Authority~~

8 (b) *Therefore, it is the intent of the Legislature, in enacting this*
9 *act, to authorize the California Educational Facilities Authority*
10 *to construct student housing on or near campuses of the*
11 *University of California and the California State University. It is*
12 *the intent of the Legislature that the legislation that would*
13 *establish the authority this authorization include, but not*
14 *necessarily be limited to, all of the following elements:*

15 ~~(a)~~

16 (1) *The authority would be authorized to issue debt for the*
17 *purposes of building student housing on or near campuses of the*
18 *California State University and the University of California.*

19 ~~(b)~~

20 (2) *The legislation would authorize the California State*
21 *University and the University of California to sell, lease, or*
22 *otherwise transfer real property to the authority so that student*
23 *housing could be constructed on that property.*

24 ~~(c)~~

25 (3) *The legislation would structure the debt to be issued by the*
26 *authority so that the debt would not counted against the*
27 *university systems by the bond market.*

28 ~~(d) The legislation would declare that, with respect to the~~
29 ~~construction of noninstructional facilities, the provision of~~
30 ~~student housing would be the highest systemwide priority of the~~
31 ~~California State University and the University of California.~~

32 SEC. 2. *Section 66017.7 is added to the Education Code, to*
33 *read:*

34 66017.7. *The Regents of the University of California and the*
35 *Trustees of the California State University are each authorized to*
36 *sell, lease, or otherwise transfer real property to the California*
37 *Educational Facilities Authority for the purposes of the*
38 *construction of student housing on that real property pursuant to*
39 *Section 94140.*

1 *SEC. 3. Section 94100 of the Education Code is amended to*
2 *read:*

3 94100. It is the purpose of this chapter to accomplish all of
4 the following:

5 (a) To give this and future generations of youth the fullest
6 opportunity to learn and develop their intellectual and mental
7 capacities by providing private institutions of higher education
8 within the state with an additional means by which to expand,
9 enlarge, and establish dormitory, academic, and related facilities,
10 to finance those facilities, and to refinance existing facilities.

11 (b) To provide private and public institutions of higher
12 education within the state with an additional means to assist
13 students in financing their costs of attendance.

14 (c) To develop student, faculty, and staff housing on or near
15 public and participating private institutions of higher education
16 through the use of agreements with participating nonprofit
17 entities *or through the purchase or lease of real property from*
18 *the University of California or the California State University.*

19 (d) To make grants to private institutions of higher education
20 to assist students in preparing for higher education and college
21 entrance, pursuant to Article 9 (commencing with Section
22 94215).

23 *SEC. 4. Section 94110 of the Education Code is amended to*
24 *read:*

25 94110. As used in this chapter, the following words and terms
26 have the following meanings, unless the context indicates or
27 requires another or different meaning or intent:

28 (a) “Authority” means the California Educational Facilities
29 Authority created by this chapter or any board, body,
30 commission, department, or officer succeeding to the principal
31 functions thereof or to whom the power conferred upon the
32 authority by this chapter is given by law.

33 (b) “Bond” means bonds, notes, debentures, or other securities
34 of the authority issued pursuant to this chapter.

35 (c) “Cost,” as applied to a project or portion thereof financed
36 under this chapter, embraces all or any part of the cost of
37 construction and acquisition of all lands, structures, real or
38 personal property, rights, rights-of-way, franchises, easements,
39 and interests acquired or used for a project, the cost of
40 demolishing or removing any buildings or structures on land so

1 acquired, including the cost of acquiring any lands to which the
2 buildings or structures may be moved, the cost of all machinery
3 and equipment, financing charges, interest prior to, during, and
4 for a period after completion of, the construction as determined
5 by the authority, provisions for working capital, reserves for
6 principal and interest and for extension, enlargements, additions,
7 replacements, renovations and improvements, the cost of
8 engineering, financial and legal services, plans, specifications,
9 studies, surveys, estimates, administrative expenses, and other
10 expenses necessary or incident to determining the feasibility of
11 constructing any project or incident to the construction or
12 acquisition or financing thereof.

13 (d) “Dormitory” means a housing unit with necessary and
14 usual attendant and related facilities and equipment.

15 (e) “Educational facility” means a structure suitable for use as
16 a dormitory, dining hall, student union, administration building,
17 academic building, library, laboratory, research facility,
18 classroom, health care facility (including for an institution of
19 higher education that maintains and operates a school of
20 medicine, structures or facilities providing or designed to provide
21 services as a hospital or clinic, whether the hospital or clinic is
22 operated directly by the institution of higher education or by a
23 separate nonprofit corporation, the member or members of which
24 consist of the educational institution or the members of its
25 governing body), faculty and staff housing, and parking,
26 maintenance, storage, or utility facilities and other structures or
27 facilities related thereto or required or useful for the instruction
28 of students or the conducting of research or the operation of an
29 institution for higher education, and the necessary and usual
30 attendant and related facilities and equipment, but does not
31 include any facility used or to be used for sectarian instruction or
32 as a place for religious worship or any facility used or to be used
33 primarily in connection with any part of the program of a school
34 or department of divinity.

35 (f) “Faculty and staff housing” means a residential unit owned
36 by a participating college or participating nonprofit entity for use
37 by an individual holding a faculty appointment or a staff position
38 at a public university, public college, or participating college.

39 (g) “Participating nonprofit entity” means an entity within the
40 meaning of paragraph (3) of subsection (c) of Section 501 of

1 Title 26 of the United States Code that, pursuant to this chapter
2 for the purpose of owning student, faculty, or staff housing, as
3 approved by, and for participation with, the authority, undertakes
4 the financing and construction or acquisition of student, faculty,
5 or staff housing, on real property owned or leased by the entity,
6 for the benefit of a public college, public university, or
7 participating private college. The authority may determine any
8 additional qualifications of a participating nonprofit entity
9 through regulations or guidelines.

10 (h) “Participating private college” or “participating college”
11 means a private college that neither restricts entry on racial or
12 religious grounds nor requires all students gaining admission to
13 receive instruction in the tenets of a particular faith, and that,
14 pursuant to this chapter, participates with the authority in
15 undertaking the financing and construction or acquisition of a
16 project.

17 (i) (1) “Private college” means an institution for higher
18 education other than a public college, situated within the state
19 and that, by virtue of law or charter, is a nonprofit private or
20 independent degree-granting educational institution that is
21 regionally accredited and empowered to provide a program of
22 education beyond the high school level.

23 (2) For purposes of obtaining financing under this chapter,
24 “private college” also includes either of the following:

25 (A) A nonprofit affiliate, established on or prior to January 1,
26 2005, of one or more private colleges, as defined in paragraph
27 (1), the sole or primary purpose of which is to provide
28 administrative or other support services to an affiliated private
29 college or private colleges, and that undertakes the financing of a
30 project for the exclusive use and benefit of one or more of the
31 affiliated private colleges.

32 (B) A private nonprofit research organization affiliated with
33 one or more private colleges, as defined in paragraph (1), and
34 engaged in basic research and advanced education at the
35 predoctoral and postdoctoral levels, but solely for the purpose of
36 refunding bonds or other obligations previously issued by the
37 authority.

38 (j) (1) “Project” means a dormitory or an educational facility,
39 faculty or staff housing, or any combination thereof, or any

1 function concerning student loans, or interests therein, as
2 determined by the authority.

3 (2) For a participating nonprofit entity, “project” means the
4 construction or acquisition of student housing or faculty and staff
5 housing. The authority, in consultation with the top
6 administrative officials and the participating nonprofit entity,
7 shall develop and adopt regulations to ensure, to the greatest
8 extent practicable, that each project involving a participating
9 nonprofit entity is used to house students, faculty, or staff of the
10 participating private college, public college, or public university.
11 The student, faculty, or staff housing shall meet all of the
12 following criteria:

13 (A) Upon completion or acquisition of the project, the project
14 will be owned by a participating nonprofit entity and located on
15 real property owned, or leased by, that entity.

16 (B) The top administrative official of the public university,
17 public college, or participating private college that the project is
18 intended to benefit, verifies the need for housing and financing
19 assistance in a specific area pursuant to subparagraph (D).

20 (C) The project is monitored on an annual basis by the
21 authority to ensure that it meets the requirements of subparagraph
22 (E) and all other regulatory agreements entered into by the
23 authority.

24 (D) The project is located within a five-mile radius of the
25 boundary of a campus or satellite center of the public college,
26 public university, or participating private college that the project
27 is intended to benefit. The participating nonprofit entity may
28 request approval from the top official of the institution for a
29 project that is located outside the five-mile radius, provided that
30 all of the following criteria are met:

31 (i) There are no available and feasible sites within the
32 five-mile radius.

33 (ii) The project is near a mass transit destination.

34 (iii) The time required to commute from campus to the mass
35 transit destination, as estimated by the top administrative official,
36 typically does not exceed 30 minutes.

37 (E) (i) The project includes and maintains for 40 years a
38 restriction to the grant deed on the real property on which the
39 student or faculty and staff housing is to be located. The grant
40 deed shall accomplish all of the following:

1 (I) Give the public college, public university, or participating
2 private college that the project is intended to benefit the right, but
3 not the obligation, to purchase the property at fair market value.

4 (II) Ensure that students, faculty, or staff of the affected
5 campus will have first right of refusal to all available units.

6 (III) Require that, to the greatest extent feasible, at least 50
7 percent of student residents will meet the criteria for need-based
8 financial assistance, as determined by the top administrative
9 official of the affected campus.

10 (IV) Require that all contracts for construction and renovation
11 of the proposed project shall be subject to, and comply with the
12 provisions referenced in, Section 10128 of the Public Contract
13 Code.

14 (ii) For the purposes of this subparagraph, the authority shall,
15 through regulation or rule, define “student” and “faculty,” taking
16 into consideration enrollment status requirements and
17 employment status requirements. The definitions of “student”
18 and “faculty” may be different for each participating campus.

19 (k) “Public college” means a community college.

20 (l) “Public university” means any campus of the University of
21 California, the California State University, or the Hastings
22 College of the Law.

23 (m) “Student housing” means a residential unit owned *or*
24 *leased* by a participating nonprofit entity *or by the authority*, and
25 located on real property owned *or leased* by that entity *or by the*
26 *authority*, for use by an individual enrolled at a public college,
27 public university, or participating private college.

28 (n) “Student loan” means any loan having terms and
29 conditions acceptable to the authority that is made to finance or
30 refinance the costs of attendance at any private college or a
31 public college and that is approved by the authority, if the loan is
32 originated pursuant to a program that is approved by the
33 authority.

34 (o) “Top administrative official” means the chancellor in the
35 case of a campus of the University of California, the dean in the
36 case of the Hastings College of the Law, the president in the case
37 of a campus of the California State University, the president in
38 the case of a campus of the California Community Colleges, or
39 the president or highest ranking official in the case of a
40 participating private college.

1 *SEC. 5. Section 94140 of the Education Code is amended to*
2 *read:*

3 94140. The authority shall have power to do all of the
4 following:

5 (a) Adopt bylaws for the regulation of its affairs and the
6 conduct of its business.

7 (b) Adopt and have an official common seal and alter it at
8 pleasure.

9 (c) Sue and be sued in its own name, and plead and be
10 impleaded.

11 (d) Borrow money, issue bonds and notes and other
12 obligations of the authority, and provide for the rights of the
13 holders thereof as provided in this chapter.

14 (e) Acquire, lease as lessee, hold, and dispose of real and
15 personal property or any interest therein, in the exercise of its
16 powers and the performance of its duties under this chapter.

17 (f) Acquire, in the name of the authority by purchase or
18 otherwise, on the terms and conditions and in the manner as it
19 deems proper, any land or interest therein and other property that
20 it determines is reasonably necessary for any project, including
21 any lands held by any county, municipality, or other
22 governmental subdivision of the state; and to hold and use the
23 same and to sell, convey, lease, or otherwise dispose of property
24 so acquired, no longer necessary for the authority's purposes.

25 (g) Receive and accept, from any federal or other public
26 agency or governmental entity, grants or loans for or in aid of the
27 acquisition or construction of any project, and to receive and
28 accept aid or contributions from any other source, of either
29 money, property, labor, or other things of value, to be held, used,
30 and applied only for the purposes for which the grants, loans, and
31 contributions may be made.

32 (h) Prepare, or cause to be prepared, plans, specifications,
33 designs, and estimates of costs for the construction and
34 equipment of projects for participating colleges and participating
35 nonprofit entities under this chapter, and from time to time to
36 modify those plans, specifications, designs, or estimates.

37 (i) By contract or contracts or by its own employees to
38 construct, acquire, reconstruct, rehabilitate and improve, and
39 furnish and equip, projects for participating colleges and
40 participating nonprofit entities.

1 (j) Employ consulting engineers, architects, accountants,
2 construction and financial experts, superintendents, and other
3 employees and agents that may be necessary in its judgment and
4 to fix their compensation.

5 (k) Determine the location and character of any project to be
6 undertaken pursuant to this chapter, and construct, reconstruct,
7 repair, lease, as lessee or lessor, the same; enter into contracts for
8 any or all of those purposes; and designate a participating private
9 college or participating nonprofit entity as its agent to determine
10 the location and character of a project undertaken by the
11 participating private college or participating nonprofit entity
12 under this chapter and, as the agent of the authority, construct,
13 reconstruct, maintain, repair, operate, lease, as lessee or lessor,
14 and regulate the same, and, as agent of the authority, to enter into
15 contracts for any and all of those purposes including contracts for
16 the management and operation of the project.

17 (l) Establish rules and regulations for the use of a project or
18 any portion thereof and to designate a participating private
19 college or participating nonprofit entity as its agent to establish
20 rules and regulations for the use of a project undertaken by the
21 participating private college or participating nonprofit entity.

22 (m) Generally establish, revise from time to time, and charge
23 and collect, rates, rents, fees, and other charges for the use of and
24 for the services furnished or to be furnished by a project or any
25 portion thereof and contract with holders of its bonds and with
26 any other person, party, association, corporation, or other body,
27 public or private, in respect thereof.

28 (n) Enter into any and all agreements or contracts, execute any
29 and all instruments, and do and perform any and all acts or things
30 necessary, convenient, or desirable for the purposes of the
31 authority or to carry out any power expressly given in this
32 chapter.

33 (o) Invest any moneys held in reserve or sinking funds, or any
34 moneys not required for immediate use or disbursement, at the
35 discretion of the authority, in obligations that are authorized by
36 law for the investment of trust funds in the custody of the
37 Treasurer.

38 (p) Charge, and equitably apportion among participating
39 private colleges and participating nonprofit entities, its

1 administrative costs and expenses incurred in the exercise of the
2 powers and duties conferred by this chapter.

3 (q) Finance, directly or through an intermediary, or purchase
4 or take assignments of, or make commitments to finance, directly
5 or through an intermediary, or purchase or to take assignments
6 of, student loans, to contract in advance for those student loans,
7 and to contract in advance for that financing, purchase, or
8 assignment, and to pay any amounts payable in respect thereto. A
9 student loan shall be eligible for financing or purchase by the
10 authority or for assignment hereunder regardless of the
11 repayment status of the loan. Any pledge made to secure
12 authority financing for student loan project purposes shall be
13 valid and binding from the time the pledge is made. The revenues
14 and receipts of property or interest in the property pledged and
15 thereafter received by the authority, a participating college or
16 public institution of higher education, a servicer, a trustee, or a
17 custodian shall immediately be subject to the lien of the pledge
18 without any physical delivery thereof or further act, and the lien
19 of any pledge shall be valid and binding against all parties having
20 claims of any kind in tort, contract, or otherwise against the
21 authority, participating college or public institution of higher
22 education, servicer, trustee, or custodian irrespective of whether
23 the parties have notice thereof. Neither the resolution nor any
24 other instrument by which a pledge is created need be recorded.

25 (r) Hold or invest in student loans, create pools of student
26 loans, and sell bonds bearing interest on a taxable or tax-exempt
27 basis or other interests backed by the pools of student loans.

28 (s) Contract or otherwise provide for the distribution,
29 processing, origination, purchase, sale, servicing, securing, and
30 collection of student loans, the payment of fees, charges, and
31 administrative expenses in connection therewith, and the funding
32 of reserves required or provided for in any resolution authorizing,
33 or trust agreement securing, authority financing for student loan
34 purposes.

35 (t) Assist in providing support to participating colleges or
36 participating nonprofit entities to enhance the market acceptance
37 of potential bond issues by the authority, including securing
38 probable or actual credit ratings from nationally recognized bond
39 rating agencies, providing or obtaining liquidity or credit
40 enhancement, providing or securing bond reserve funds,

1 performing any other action deemed necessary by the authority,
2 and incurring necessary expenses, payable from available
3 authority funds, for any of these purposes.

4 *(u) Purchase, lease, or otherwise receive real property from*
5 *the Regents of the University of California or from the Trustees*
6 *of the California State University that is on or near a campus of*
7 *either segment, and contract for or otherwise provide for the*
8 *construction of student housing on that real property.*

9 *SEC. 6. Section 94146 of the Education Code is amended to*
10 *read:*

11 94146. (a) Bonds issued under ~~the provisions of~~ this chapter
12 shall not be deemed to constitute a debt or liability of the state or
13 of any political subdivision thereof or a pledge of the faith and
14 credit of the state or of any political subdivision other than the
15 authority, but shall be payable solely from the funds herein
16 provided. All bonds shall contain on the face thereof a statement
17 to the effect that neither the State of California nor the authority
18 shall be obligated to pay the same or the interest thereon except
19 from revenues of the project or the portion thereof for which they
20 are issued and that neither the faith and credit nor the taxing
21 power of the State of California or of any political subdivision
22 thereof is pledged to the payment of the principal of or the
23 interest on the bonds.

24 (b) The issuance of bonds under ~~the provisions of~~ this chapter
25 shall not directly or indirectly or contingently obligate the state
26 or any political subdivision thereof to levy or to pledge any form
27 of taxation whatever therefor or to make any appropriation for
28 their payment. No provision of this section shall prevent or be
29 construed to prevent the authority from pledging its full faith and
30 credit or the full faith and credit of a participating private college
31 or participating nonprofit entity to the payment of bonds or issue
32 of bonds authorized pursuant to this chapter.

33 *(c) This section does not apply to bonds issued for the purpose*
34 *of funding the construction of student housing, and the purchase*
35 *or lease of real property therefor, on or near a campus of the*
36 *University of California or the California State University*
37 *pursuant to subdivision (u) of Section 94140.*